

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIE TRAVIS, <i>on behalf of</i>	*	Case No. 17-CV-04885 (JFB)
<i>herself and all others</i>	*	
<i>similarly situated,</i>	*	
	*	
Plaintiff,	*	Central Islip, New York
	*	January 24, 2019
v.	*	
	*	
NAVIENT CORPORATION, et al.,	*	
	*	
Defendants.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR
INITIAL CONFERENCE AND MOTION HEARING
BEFORE THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	BRIAN C. GUDMUNDSON, ESQ. Zimmerman Reed, P.L.L.P. 1100 IDS Center 80 South Eighth Street Minneapolis, MN 55402
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1 (Proceedings commenced at 2:11 p.m.)

2 THE CLERK: Calling case civil 2017-4885, Travis vs.
3 Navient Corporation. Counsel, please state your appearance
4 for the record.

5 MR. GUDMUNDSON: Good afternoon, Your Honor. Brian
6 Gudmunson on behalf of the plaintiff.

7 MR. GRANADE: Good afternoon, Your Honor. George
8 Granade on behalf of the plaintiff.

9 THE COURT: Excellent. And?

10 MS. SIMONETTI: Good afternoon, Your Honor. Lisa
11 Simonetti for defendants.

12 THE COURT: Okay. And when you say that, who are
13 the defendants?

14 MS. SIMONETTI: Navient Corporation and Navient
15 Solutions, LLC.

16 THE COURT: Got it. Okay. I know it's a student
17 loan case. I was concerned the shutdown would have affected
18 you in some way, but I guess not. Okay.

19 MS. SIMONETTI: Not yet.

20 THE COURT: Not yet. Not us yet either, but we're
21 getting close.

22 MS. SIMONETTI: Right.

23 THE COURT: All right. What's the -- tell me what
24 the problem is with the loans?

25 MR. GUDMUNDSON: We're here, Your Honor, I believe

1 because the plaintiff submitted a letter to Judge Bianco
2 simply asking that discovery go forward.

3 THE COURT: I know. What's the problem with the
4 loans? Tell me.

5 MR. GUDMUNDSON: I'm sorry.

6 THE COURT: What is the problem with the student
7 loans?

8 MR. GUDMUNDSON: With the student loans?

9 THE COURT: Yeah.

10 MR. GUDMUNDSON: I misunderstood your question, Your
11 Honor.

12 THE COURT: Okay.

13 MR. GUDMUNDSON: I apologize.

14 THE COURT: Okay.

15 MR. GUDMUNDSON: The problem with the student loans
16 is how they were serviced. The defendant is a combination of
17 companies that contract with the federal government to carry
18 out the actual day-to-day servicing of the loans.

19 THE COURT: Okay.

20 MR. GUDMUNDSON: The Government may do the lending,
21 but collecting the bills, sending the bills, negotiating how
22 those are going to be paid is left up to Navient.

23 THE COURT: I'm familiar with the concept.

24 MR. GUDMUNDSON: Many, many, many millions of
25 Americans are.

1 THE COURT: Okay.

2 MR. GUDMUNDSON: And the problem here is that it was
3 uncovered, we believe and we've alleged, as the CFPB and a
4 number of states' attorney generals, that Navient, in the
5 course of carrying out its servicing activities, determined at
6 a certain point that taking borrowers who are financially
7 strapped through the options that were available to them was
8 too costly.

9 And so to do a workaround that was much less costly,
10 they would be simply put into forbearance, whether that was
11 the right thing to do or not.

12 THE COURT: And now forbearance means what?

13 MR. GUDMUNDSON: Forbearance means that you stop
14 paying your student loan.

15 But while you're not paying the interest continues
16 to accrue, so that when you come out of forbearance you have a
17 higher monthly payment.

18 THE COURT: What are the other options? In other
19 words, I can't pay, what else can we do?

20 MR. GUDMUNDSON: Well, there's a number of options
21 that are available by regulation and that we believe Navient
22 was obligated to at least discuss or walk or enroll them in.

23 And it includes basically looking at a person's --
24 I'm sorry -- a borrower's income and determining whether it
25 should be lowered, whether it should be lowered to zero,

1 whether, you know, there's other arrangements that could be
2 made other than forbearance.

3 THE COURT: Okay.

4 MR. GUDMUNDSON: Forbearance would generally
5 considered a last step.

6 THE COURT: Okay. You have how many plaintiffs?

7 MR. GUDMUNDSON: There is one named plaintiff.

8 THE COURT: Okay. And you would guess that the
9 class size is what, if you can.

10 MR. GUDMUNDSON: Well, if it was based on how many
11 people have contacted our office to inquire about becoming a
12 plaintiff, it would be in the many, many, many, many large
13 number of people. We do not have a number yet. Certainly in
14 the many, many thousands.

15 THE COURT: Okay.

16 MR. GUDMUNDSON: We do not yet know if it's in the
17 many millions.

18 THE COURT: And the class would encompass what
19 geographic area, what time frame? What's your -- how are you
20 defining a class?

21 MR. GUDMUNDSON: All borrowers of Navient who had --
22 I'm sorry. All borrowers who had loans serviced by Navient.

23 THE COURT: Nationwide?

24 MR. GUDMUNDSON: Nationwide. And, of course --

25 THE COURT: That's interesting. And I say

1 interesting because I've had -- I haven't had this exact
2 formulation, but I've had a lot of similar issues in the
3 mortgage lending business, right.

4 So what I generally find there -- maybe it's
5 different because it's a federal program, but that the banking
6 laws are such that it's usually state by state, because
7 usually you're only licensed to do mortgages in your own
8 state. So there would be a different class action in New
9 Jersey. That's not the case here?

10 MR. GUDMUNDSON: It is not the case here. Although
11 the business that Navient has somewhat self-limits the reach,
12 the geographic reach, because --

13 THE COURT: Okay.

14 MR. GUDMUNDSON: -- there's other servicers.

15 THE COURT: All right.

16 MR. GUDMUNDSON: And so, you know, if I -- I'm from
17 Minnesota. And so if I borrowed money in the State of
18 Minnesota and decided to move to New York, I haven't lost my
19 claim. It emanates from the federal regulatory scheme.

20 THE COURT: Got it.

21 MR. GUDMUNDSON: So it sort of transports with you.
22 Although if Navient doesn't do business in Hawaii, we'll have
23 no class members in Hawaii.

24 THE COURT: Okay. And what was the actual impact on
25 your named plaintiff of the scheme that you allege? Your

1 claim is what, that a person paid or accrued interest that
2 they wouldn't have accrued if some of the other options were
3 presented?

4 MR. GUDMUNDSON: Devastating financial impact. Our
5 client is a woman who lives I think maybe five miles from the
6 front door of this courthouse. She's a very-hard working
7 person. She had severe health issues that stopped her from
8 working. She went back to work.

9 It came back. She had to stop. Each time she --
10 I'm paraphrasing of course, Your Honor, because the complaint,
11 it speaks for itself.

12 THE COURT: Got it. Got it. Got it. We're just
13 talking. Go ahead.

14 MR. GUDMUNDSON: Yeah. When she couldn't work, she
15 needed help and was told go into forbearance.

16 Her now bills are now such that they're too much for
17 her to pay. And every day that goes by pushes her further and
18 further, sort of to in a financial distress. It's a familiar
19 theme across the class.

20 THE COURT: No. No. I hear you. I was just trying
21 to kind of scope the problem.

22 MR. GUDMUNDSON: Sure.

23 THE COURT: In other words, did the interest get
24 bigger than the principal?

25 MR. GUDMUNDSON: It certainly did.

1 THE COURT: It did.

2 MR. GUDMUNDSON: Oh, I don't have the figures
3 sitting in front of me, but the interest is much more now than
4 it was when she originally started.

5 THE COURT: No. Did it get more than -- did it get
6 larger than the principal? I'm trying to kind of --

7 MR. GUDMUNDSON: Oh.

8 THE COURT: Are we talking thousands and tens of --
9 what's the numbers like? That's what I'm trying to get a feel
10 for.

11 MR. GUDMUNDSON: I don't have that information in
12 front of me, but I can certainly get it.

13 THE COURT: Okay. It matters to your client.

14 MR. GUDMUNDSON: Oh. It --

15 THE COURT: I try to understand cases from, you
16 know, from the each point of view.

17 MR. GUDMUNDSON: You're absolutely right, Your
18 Honor, and I appreciate that perspective very much.

19 From my client's perspective, who we've spoken to
20 even very recently, is getting notices after notices about
21 being delinquent and potentially going into default.

22 She looks at what she's able to take in each month
23 in income and what she's has to pay. And it's that number
24 that comes on that check that just doesn't seem to make any
25 sense.

1 THE COURT: All right. So I try to challenge you
2 all as much as possible. And I recognize we're not here --

3 MR. GUDMUNDSON: Certainly.

4 THE COURT: -- for a class action motion. You're
5 not even there yet.

6 But in formulating a discovery plan or obligations
7 and so forth, I have to think of things, right? I don't know
8 what the basis of the motion to dismiss is. I'm going to
9 admit to all of you I haven't looked at it. That's Judge
10 Bianco's motion. It hasn't been referred to me.

11 If it is, I'll dig into it. If you want to consent
12 to me for all purposes, you can. And there's no -- there's
13 no prejudice for not consenting to a magistrate judge. I have
14 to say that. It's in the law. A double negative, you know
15 what that means.

16 But what I mean by that though is if you want to do
17 that, at some point it's more convenient, talk to each other
18 first and make sure you both agree.

19 MS. SIMONETTI: Right.

20 THE COURT: I don't want hear, oh, we'll agree and
21 they won't. I don't care. It's up to you. All right.

22 MR. GUDMUNDSON: Certainly.

23 THE COURT: But I have to go a little bit more into
24 it to sort of see what we're talking about. I have a weird
25 question. I'm going to ask it in a rude manner.

1 How could this possibly become a class action in
2 terms of the commonality aspect, meaning that your client was
3 sick, didn't work for a while, then did work for a while, and
4 was put into forbearance.

5 Although you think that maybe she could have taken
6 option B, which was something else, to lower her income and
7 lower the payments and roll it differently.

8 Isn't everyone's story going to be different in that
9 regard?

10 MR. GUDMUNDSON: I think that in every single class
11 action that's ever been brought that would be true. In this
12 case --

13 THE COURT: Oh, not really.

14 MR. GUDMUNDSON: Well --

15 THE COURT: I have class actions involving thousand
16 dollar fines. Everybody's owed a thousand dollars. We're
17 done. It's very easy.

18 MR. GUDMUNDSON: Okay.

19 THE COURT: Right? That's beautiful. You know.
20 That's what the class action stuff is best at. This is hard
21 though, right?

22 MR. GUDMUNDSON: Certainly. And you're asking a
23 legitimate question. It's a question that Judge Bianco asked
24 since there's a motion to strike the class allegations pending
25 before him.

1 THE COURT: Right.

2 MR. GUDMUNDSON: And we talked about it at the
3 hearing.

4 THE COURT: And he's a great jurist. So if I got
5 one that he got, I'm feeling good today. So go ahead.

6 MR. GUDMUNDSON: Sure. And listen, we believe that
7 in discovery it is going to be borne out that everybody's a
8 victim of a common scheme.

9 And so what we need to find out is, number one, was
10 there a common scheme and was everybody injured? Whether they
11 were damaged in a different way, we feel it's pretty black
12 letter law they can't defeat a class.

13 But what Your Honor's wondering, I believe --

14 THE COURT: Right.

15 THE COURT: -- in order for me to get --

16 THE COURT: How am I going to manage this at the end
17 of the day? That's what I'm asking.

18 MR. GUDMUNDSON: How am I -- how am I going to
19 manage this?

20 THE COURT: Yeah.

21 MR. GUDMUNDSON: Well, I think it helps to look at
22 it from a damages perspective. Like how could each of these
23 persons have been damaged without looking at -- well, one of
24 the core things, and this isn't class cert, but one of the
25 core things we believe we'll be allegedly is that every single

1 person, whether they go into forbearance or not, pays a
2 certain amount for servicing.

3 And you know this because if you agree to certain
4 paperless billing and things like that they'll reduce your
5 interest rate. So a component of what everybody's paying is
6 for servicing.

7 THE COURT: Oh, that's interesting.

8 MR. GUDMUNDSON: And they did not receive the value
9 of what they paid for no matter whether they --

10 THE COURT: Oh, that's interesting.

11 So you're saying to me that one potential sort of
12 easy damage fix is to say everyone gets the value of the
13 servicing returned to them?

14 MR. GUDMUNDSON: Under a breach of contract theory
15 or other theories, yes.

16 THE COURT: That's interesting. That's interesting.

17 MR. GUDMUNDSON: Right. And then we've got -- and
18 then we've got other, you know, of course consequential
19 damages and things like that that could be handled through
20 individual examinations, like we do in many cases that are
21 certified but damages issues are left for later.

22 THE COURT: Okay. So you're the one asking for
23 discovery.

24 Counsel, I'm going to let you speak. Don't worry.
25 I'm not --

1 MS. SIMONETTI: I'm not anxious.

2 THE COURT: I'm just exploring everything I can.

3 And your adversary is going to say to me but we got
4 this motion to dismiss that's going to kill this class action.
5 Forget it. And they want all of this. What's all of this?
6 What do you really want at this stage?

7 MR. GUDMUNDSON: Well, it's again our complaint. I
8 don't want to -- I don't have it sitting in front of me and I
9 don't want to say something that's askance, but it sort of
10 speak for itself, but I do want to tell Your Honor exactly
11 what we're after here.

12 THE COURT: Let me refine the question. Let me
13 refine the question by saying while her motion to dismiss is
14 still pending, what are you looking for?

15 MR. GUDMUNDSON: Oh, I'm sorry.

16 THE COURT: Right.

17 MR. GUDMUNDSON: I misunderstood Your Honor.
18 We are simply asking that discovery go forward.

19 THE COURT: On what?

20 MR. GUDMUNDSON: On everything.

21 THE COURT: That makes it harder, right?

22 MR. GUDMUNDSON: Well, I want to sort of apprise
23 Your Honor, on the way to the courthouse here through the gale
24 winds, Ms. Simonetti and I had a --

25 THE COURT: I made it tough today. So go ahead.

1 Yeah.

2 MR. GUDMUNDSON: No. It's well worth it.

3 We had a chance to talk and Ms. Simonetti raised
4 some of these concerns with me and we did have a chance to
5 sort of examine it. And I'll tell you what I told defense
6 counsel.

7 You know, up until today on the drive through the
8 gale force winds, we have tried to negotiate a protective
9 order, an ESI order, ESI protocol, discovery order.

10 We've got requests for production served. We've
11 received objections and responses. We've received some
12 documents.

13 We've also received a number of objections that we
14 just look at and say, you know, from our perspective are
15 ridiculous, from their perspective are very meritorious.
16 We're probably going to be before Your Honor for a resolution
17 of those at some point.

18 Let's move forward with meeting and conferring on
19 those and getting them out of the way and moving forward with
20 discovery. Okay.

21 So Ms. Simonetti says to me -- what's in her papers
22 and what she'll tell you, all well and good, but then you're
23 going to say, okay, now start running the searches and start
24 producing things without us really knowing what the scope of
25 the case is. You could get dismissed. You may not get

1 anything. Very costly.

2 And I gave it some thought and I responded as
3 follows. There's nothing wrong at all with going forward with
4 meeting and conferring on these objections, some of which are
5 just -- I'm not even going to -- I could read them if Your
6 Honor wants to hear them, but --

7 THE COURT: No. I really don't.

8 MR. GUDMUNDSON: No. No.

9 THE COURT: I so don't.

10 MR. GUDMUNDSON: We think that it's going to -- it's
11 going to take some time to get through these things and
12 understand exactly where we're going on this thing.

13 If such a point comes that we have resolved all
14 these before Your Honor, we've received the orders which are
15 very likely going to be needed, and we've resolved our ESI
16 issues, and we still have not gotten an order, I think it's
17 perfectly reasonable for us to say -- to put into any order
18 that comes from Your Honor today the parties shall meet and
19 confer at that point should an order not be pending whether or
20 not you should go forward.

21 THE COURT: Okay. Let me add and let me stir it up
22 by saying that to the extent that we're going forward with
23 discovery -- and I'm not prejudging anything, I'm going to
24 hear everybody first -- meeting and conferring is the golden
25 rule, right, because you meet, you work it out.

1 Because if you ask me for a decision, I'm happy to
2 do it. It's my job. It's why they're -- well, not paying me
3 now, but it's why they usually pay me, right, until the
4 shutdown's over.

5 But that said, you know, the point is if you put it
6 to me for a decision, I will make a decision that by
7 definition will make everyone unhappy, right? You won't get
8 what you want. You'll have to turn over too much.

9 You know, you know what you can do. You know what
10 you need. And when you sit down and talk and figure it out,
11 you're going to get a much better resolution than I'm going to
12 be able to give you. That said, sometimes you can't and
13 that's why we're here. That's why they give me this thing,
14 right. So we'll take care of it.

15 I see a range in my head already without even
16 letting your adversary say word one to me today that could
17 range from absolutely everything. 745,000 plaintiffs turn over
18 every file, or I could say not at all. Nothing. Zero.
19 Because the motion to dismiss is so wide ranging that I --

20 There are steps in between those two extremes,
21 right? One might be, Judge, what if we did discovery only on
22 the named plaintiff in terms of her file? Maybe you already
23 have that stuff. I don't know.

24 But as well as sort of the what I'm going to call
25 the higher level stuff, you know. Policies and procedures

1 manuals, you know, things that -- decisions that were made --
2 you know, something that would be not overly burdensome.

3 Excuse me one second.

4 (Pause.)

5 THE COURT: All right. I'm going to leave you with
6 this thought. I'll be right back. All right?

7 MR. GUDMUNDSON: Yes, Your Honor.

8 THE COURT: You know, is there -- is there sort of
9 some sort of core stuff that you'll get to even if it's in an
10 individual case, right, that you could work out? And I'm
11 going to leave you to talk about that for a few seconds with
12 your adversary and I'll be back. Okay?

13 MS. SIMONETTI: Thank you, Your Honor.

14 MR. GUDMUNDSON: Thank you.

15 (Court recessed at 2:26 p.m. and resumed at 2:33 p.m.)

16 THE COURT: And?

17 MR. GUDMUNDSON: Well, I think we agree on some
18 things and I think we certainly disagree on some things that
19 are pretty important to the plaintiffs.

20 THE COURT: All right. Well, hold onto the
21 disagreement part and I'll come back.

22 Let me let you speak.

23 MS. SIMONETTI: Thank you. And just to clear up
24 some of the context of the case, there are two defendants
25 here. The first is Navient Corporation, which is a holding

1 company and does not in fact engage in any loan servicing
2 activity. So that presents a set of issues for us in that
3 they're not actually engaged in any of these servicing
4 programs.

5 THE COURT: What do you say about that?

6 MR. GUDMUNDSON: I say we need some jurisdictional
7 discovery because our allegations, I think, are pretty clear
8 in the complaint.

9 THE COURT: Wait. It's not jurisdictional. She's
10 saying we don't do that. Right? Unless you're alleging some
11 kind of piercing of the corporate veil. Right?

12 MR. GUDMUNDSON: Well, these issues have been
13 briefed. We even briefed that issue in the motion to dismiss.
14 But we --

15 THE COURT: Wait. You briefed the motion? You
16 briefed the issue on the parent company?

17 MR. GUDMUNDSON: We did not.

18 THE COURT: Okay. So why don't you let the parent
19 company out with the right to reinstate the complaint if
20 discovery shows otherwise?

21 MR. GUDMUNDSON: Well, we believe that the claims
22 we've asserted against the parent company are meritorious.

23 THE COURT: How can you believe that if they don't
24 do loan servicing?

25 MR. GUDMUNDSON: Well --

1 THE COURT: If she's right --

2 MR. GUDMUNDSON: -- if they were --

3 THE COURT: -- doesn't it end there?

4 MR. GUDMUNDSON: No. Because if they're responsible
5 for the representations that were made, they would need to be
6 doing the loan servicing themselves.

7 THE COURT: I mean, it's an entity. When you say
8 they're responsible, what do you mean?

9 MR. GUDMUNDSON: I'm actually actively litigating
10 this in another case, so this is sort of at the forefront of
11 my mind. And I don't have this complaint sitting in front of
12 me. It's --

13 THE COURT: That's okay.

14 MR. GUDMUNDSON: But, you know, we've alleged the
15 liability that they both have. And they --

16 THE COURT: Okay. So, counsel, what I'm going to
17 say to you is -- I don't know you. You've never appeared
18 before me before. I think this is your first time.

19 MR. GUDMUNDSON: Correct.

20 THE COURT: Yeah. Okay. You seem a reasonable
21 fellow, right?

22 And I'm just going to say to you, you know, when you
23 have big complicated cases, sometimes there are relatively
24 easy gives, right?

25 And you've got to remember although she's

1 representing a gigantic banking corporation, you probably see
2 them as being like, you know, some huge corporate monolith,
3 she's got a client to deal with, right?

4 If she can go home to her client and say you know
5 what, we're working with these folks, they helped us with this
6 piece, right, it engenders a little good will I think. That's
7 just something to think about.

8 MR. GUDMUNDSON: Your Honor, we've seen nothing in
9 the record today and certainly have not seen any arguments
10 that indicate that that is warranted to dismiss this case. So
11 if Judge Bianco sees it differently, it's fine.

12 THE COURT: But you hear my point? I'm not saying
13 that you're wrong on the merits. I'm saying on the -- if she
14 has a corporate entity that's been roped in erroneously, right
15 --

16 MR. GUDMUNDSON: We have no interest in reviewing
17 documents or pursuing a defendant who has no liability.

18 THE COURT: That's what I'm saying. Wow. We're in
19 violent agreement you and I. Okay.

20 Sorry. Keep going. So that's one, but go ahead.

21 MS. SIMONETTI: All right. So Navient Solutions,
22 LLC is the servicing entity. And these claims have to do with
23 the two primary federal loan programs. The Direct Loan
24 Program and the Federal Family Education Loan Program or FFEL
25 Program.

1 THE COURT: Okay.

2 MS. SIMONETTI: Under the Direct Loan Program, the
3 Government is the direct lender on the loans. And under the
4 FFEL Program there is an original creditor, then there are
5 some guarantee agencies, and then the federal government is
6 the ultimate guarantor.

7 THE COURT: Right. Okay.

8 MS. SIMONETTI: But at the end of the day they --

9 THE COURT: So it's either it's coming from a bank
10 but it's guaranteed by the Government or it's coming directly
11 from the Government.

12 MS. SIMONETTI: Right. At the end --

13 THE COURT: And you're servicing both types?

14 MS. SIMONETTI: We service both types. That is
15 correct.

16 THE COURT: Excellent. Okay.

17 MS. SIMONETTI: And I think as all plaintiffs
18 allege, we are probably the largest loan servicer in the
19 country.

20 THE COURT: Okay.

21 MS. SIMONETTI: And it is a very large portfolio.
22 And the claims in the complaint are based on state law, all of
23 them. And the central allegation is what the plaintiffs call
24 steering.

25 THE COURT: Hold on. All of the claims are based on

1 state law?

2 MS. SIMONETTI: Yes, they are. So we have a
3 preemption defense. We say you can't do this because there's
4 a higher education hat.

5 THE COURT: Okay. But there's something else, which
6 is, when I asked you about the class before, you were saying
7 nationwide, but what you really mean is people who started in
8 New York, yes?

9 MR. GUDMUNDSON: I'm sorry?

10 THE COURT: It's people who -- when I asked you
11 about the class, you said it would be a nationwide class. But
12 it can't be, right?

13 MR. GUDMUNDSON: Well, we --

14 THE COURT: The people had to have been in New York
15 at some point. Somebody from Minnesota who got a loan in
16 Minnesota can't possibly claim the benefit of New York law.

17 MR. GUDMUNDSON: But we've had -- we've had a choice
18 of law analysis that's forthcoming with the class
19 certification motion certainly, but we think that it
20 conceivably could be certified nationwide.

21 THE COURT: Where is the corporation domiciled?

22 MS. SIMONETTI: Navient Corporation is domiciled in
23 Delaware. And Navient Solutions is either Delaware or
24 Virginia, depending on how you look at it.

25 THE COURT: Okay. So we've got Delaware/Virginia

1 companies --

2 MS. SIMONETTI: Right.

3 THE COURT: -- and a borrow in Minnesota who's never
4 seen the great state of New York -- and I'm sorry for that
5 person -- but that can't be part of your class, right?

6 MR. GUDMUNDSON: We believe it -- well, I'm not here
7 to give a treatise on the law -- of choice of law, but
8 certainly we've been able to certify classes nationwide under
9 state law. For example, in the *Target* data breach case.

10 THE COURT: But there has to be some link, right?
11 In other words, the person had -- the class member has to have
12 been in New York at some point, when the loan was made or when
13 it was serviced or when it was paid or something. No? If you
14 were somebody who never left the great state of Minnesota, and
15 borrowed money from them --

16 MR. GUDMUNDSON: Well, certainly it may not be New
17 York law applies except for those who live or reside in the --

18 THE COURT: She just said to me all your clients are
19 New York claims, yeah?

20 MR. GUDMUNDSON: Okay.

21 MS. SIMONETTI: They're all state law claims. They
22 are --

23 THE COURT: Oh, not New York State law claims.

24 MS. SIMONETTI: I'm sorry.

25 THE COURT: They're just state, various states. Got

1 it. Sorry. Sorry. My bad.

2 MS. SIMONETTI: Sorry, Your Honor.

3 THE COURT: No. No.

4 MS. SIMONETTI: Sorry, Your Honor. I didn't -- I
5 didn't mean -- yes.

6 THE COURT: I jumped to a -- I jumped to a
7 conclusion there. Okay.

8 MS. SIMONETTI: I liked that conclusion though. We
9 just can't go there right now.

10 THE COURT: So they're all state -- different
11 states' laws, yes?

12 MS. SIMONETTI: At the end of the day, I think that
13 would be part of their analysis. They have to show that
14 they're common at that point in time.

15 THE COURT: Understood. Wow. That's interesting
16 too. Interesting is bad for everybody. I should say that out
17 loud. When I say interesting, that means a lot of arguments.
18 I got it.

19 MS. SIMONETTI: But the simple theory is steering.
20 And the idea of steering is that in conversations with NSL's
21 -- we call it NSL, customer service agents --

22 THE COURT: Right.

23 MS. SIMONETTI: -- that the agents steer them into
24 forbearance rather than going through the income driven
25 repayment analysis that Mr. Gudmundson mentioned. You know,

1 what's your income? How many kids do you have?

2 That they steer them into forbearance programs. I
3 don't agree that forbearance is bad for everyone by any
4 stretch. It actually is meant to be a temporary --

5 THE COURT: Okay.

6 MS. SIMONETTI: -- form of relief.

7 But setting all of that aside, the case at the end
8 of the day has to do with these conversations with
9 theoretically millions of people, which is why we made the
10 motion to strike the class allegations.

11 And, you know, fundamentally the claims are either
12 non-disclosure claims or misrepresentation claims. Again,
13 it's part of the theme behind the motion to strike.
14 And there is a very similar case that's pending in the Eastern
15 District of Pennsylvania.

16 THE COURT: I was going to ask about that.

17 MS. SIMONETTI: This is the subject of the motion to
18 transfer and consolidate and all of these things brought --

19 THE COURT: Which one's first filed?

20 MS. SIMONETTI: It's the one in Pennsylvania. And
21 those plaintiffs came here before Judge Bianco and made this
22 motion to transfer and consolidate and all of these other
23 forms of relief. That was denied and that case is still
24 ongoing there.

25 But discovery is not stayed in that case. And so

1 what we have been doing is -- back up one more second --
2 that's also where the CFPB action is pending.

3 And that's, you know, sort of the main action that
4 originally was brought with respect to these steering
5 allegations.

6 THE COURT: Okay.

7 MS. SIMONETTI: So in connection with discovery
8 here, we have produced to plaintiffs all of the information
9 that we have produced to the plaintiffs in Pennsylvania.

10 THE COURT: Okay.

11 MS. SIMONETTI: So as we make document productions
12 in that case, we take those documents and we send them over to
13 the Travis case. And --

14 THE COURT: That was wise.

15 MS. SIMONETTI: I think it's very reasonable and
16 sort of a middle ground between everything and nothing.

17 THE COURT: Yes.

18 MS. SIMONETTI: And --

19 THE COURT: And to the extent that your client
20 accuses you of being soft, you could tell them I said I would
21 have ordered you to do that anyway. So we're good.

22 MS. SIMONETTI: They're actually pretty reasonable.

23 THE COURT: Okay.

24 MS. SIMONETTI: They like to save money and they
25 like to avoid, you know --

1 THE COURT: No. No. But it's smart because you're
2 doing it anyway so why not. You know.

3 MS. SIMONETTI: Exactly. And we have produced Ms.
4 Travis' own file, that's, you know, call logs, correspondence
5 history, recordings of conversations.

6 THE COURT: Okay. So what are you asking me to stay
7 or put off for the time being?

8 MS. SIMONETTI: It's a couple of things. Anything
9 that has to do with ESI is always a great matter of great
10 controversy. Who do you serve? How many custodians? What
11 are the search terms? What will it cost to pull back? What
12 do we review? What's privileged? All of those types of
13 things.

14 And because there is this -- the Government actions
15 pending -- so there are a few Government actions, a few states
16 in the CFPB --

17 THE COURT: Right.

18 MS. SIMONETTI: -- there are undoubtedly documents,
19 you know, that relate to the investigations that we would then
20 have to go look for.

21 I'm aware, as of the past few days, that there are
22 privileged -- bank examination, privileged documents related
23 to the CFPB. That is what counsel and I just talked about
24 when you left the room.

25 THE COURT: Okay.

1 MS. SIMONETTI: That's a privilege that belongs to
2 CFPB. It appears under the regulations, not us. So then there
3 has to be notice. And these are issues that --

4 THE COURT: Yeah. I handled this in an attorney
5 general investigation of dental monopoly. Look it, I got
6 that. Wow. Five hundred cases. I remember some of them.

7 MS. SIMONETTI: Yeah.

8 THE COURT: But I looked at that issue. That's a
9 little complicated, investigative stuff and other
10 jurisdictions.

11 MS. SIMONETTI: Exactly.

12 THE COURT: Okay.

13 MS. SIMONETTI: Exactly. And when the privilege
14 does not belong to the company.

15 So my understanding -- and trust me, I am no expert
16 -- we would have to give notice to CFPB, deal with them in
17 terms of whatever their response would be --

18 THE COURT: Yeah. That gets a little funny because
19 -- I don't mean funny ha, ha, I mean funny odd, because the
20 question is if it's your document, but the -- I'm going to
21 make it up -- the Arizona Attorney General asked you for it,
22 right --

23 MS. SIMONETTI: Right.

24 THE COURT: -- and they said give us all the
25 documents you gave the attorney general. But it's your

1 documents, it's not really privileged --

2 MS. SIMONETTI: Right.

3 THE COURT: -- they're just getting at it sort of
4 through a privileged -- what you might -- because it would be
5 a privilege mechanism it gets odd, right?

6 MS. SIMONETTI: As I said --

7 THE COURT: That's hard.

8 MS. SIMONETTI: -- I'm no expert. As I sit here
9 right now, if any of this were to come to pass, I would
10 certainly get up to speed.

11 THE COURT: Right.

12 MS. SIMONETTI: But for the moment, I guess how I
13 look at it is we have provided the claims file. We've
14 provided these kind of core documents about the program, the
15 IDR Program, that's the, you know, the basis of the case.

16 We will continue to provide these core documents to
17 the extent that they are pulled and produced in the other
18 case. They stand then on the same footing.

19 THE COURT: When was your motion fully briefed?

20 MS. SIMONETTI: In this matter?

21 THE COURT: Mm-hmm.

22 MS. SIMONETTI: It was fully briefed -- it was heard
23 on February 6th, 2018.

24 THE COURT: Oh. Okay.

25 MS. SIMONETTI: But there was further briefing

1 requested that was completed in December.

2 I want to say you filed your last brief in December?

3 MR. GUDMUNDSON: November/December. It was a

4 discrete issue requested by Judge Bianco.

5 MS. SIMONETTI: Right. Having to do with the Higher

6 Education Act preemption. And there were supplemental

7 memoranda put in. And that's where we stand vis-a-vis Judge

8 Bianco.

9 THE COURT: So I'm going to say no matter what

10 you're going to get a 2019 decision.

11 MS. SIMONETTI: That seems very likely, yes.

12 THE COURT: I think that's a pretty good, reasonable

13 estimate.

14 So the question is if I'm right, what do you need

15 between now and sometime in 2019 when the motion to dismiss is

16 decided? What do we need to work on between then and now?

17 MR. GUDMUNDSON: I think that first and foremost

18 really the reason we're here -- and I don't want to be

19 unreasonable --

20 THE COURT: You're not.

21 MR. GUDMUNDSON: -- and for your --

22 THE COURT: And if I've accused you of the same, I

23 did not mean to.

24 MR. GUDMUNDSON: No. No. No. Of course not. And

25 just for your court's information, there's a great deal of

1 collegiality between defense counsel and I.

2 THE COURT: Good.

3 MR. GUDMUNDSON: We've worked together quite well.

4 THE COURT: Good. That helps actually.

5 MR. GUDMUNDSON: Yeah. And I think that first and
6 foremost we've got to get some of these objections squared
7 away.

8 They're not ones that -- you know, if we've got a
9 request give us the name or search the files for every person
10 who's put in forbearance, and Your Honor's saying, you know,
11 maybe we want to wait on that one because we want to see if
12 there's class allegations or something like that, sure,
13 absolutely.

14 But there's other things that are quite sort of ripe
15 for resolving. There's six or seven -- maybe a few more --
16 requests that have been objected to outright that we -- no
17 shock -- really want to resolve and obtain.

18 THE COURT: Okay.

19 MR. GUDMUNDSON: Not the least of which is
20 information passed between the CFPB and the defendant,
21 information related to investigations by the CFPB and the
22 number of states' attorneys general.

23 Today we've heard about an objection that's not in
24 their stated objections but which has been asserted that the
25 CFPB may have. I'd like to get to the nub of that. I'd like

1 to litigate it and have it decided if that's going to --

2 THE COURT: Forgive me. This acronym you just used,
3 CFPB --

4 MR. GUDMUNDSON: Yes.

5 THE COURT: -- stands for what?

6 MR. GUDMUNDSON: Consumer Financial Protection
7 Bureau.

8 THE COURT: And what is that?

9 MR. GUDMUNDSON: That is a --

10 THE COURT: Which government does that belong to?
11 Who is that?

12 MR. GUDMUNDSON: That would be the executive branch.

13 THE COURT: Okay. Of the federal government?

14 MR. GUDMUNDSON: I'm sorry?

15 THE COURT: Of the federal government?

16 MR. GUDMUNDSON: Of the federal government.

17 THE COURT: I have to ask because there's state --
18 there's all kinds of things, right?

19 Did they -- have they been brought into this? In
20 other words, are they telling you don't turn those over
21 because it's ours?

22 MS. SIMONETTI: So here's -- I'm sorry. So there's
23 so much going on here. The CFPB filed an action in the
24 Eastern District of Pennsylvania against these companies, so
25 it's ongoing litigation.

1 THE COURT: Right.

2 MS. SIMONETTI: And there are a couple of other
3 state AGs that have brought similar claims, you know, sort of
4 jumped on the --

5 THE COURT: Against your client?

6 MS. SIMONETTI: Correct. That's correct. And those
7 -- some of them are in the Eastern District of Pennsylvania.
8 And then there's Washington and California. But there are a
9 few different state -- and there's the one federal action.

10 So when I mentioned this examination privilege a
11 little while ago, that's what I meant. It's an examination
12 privilege that belongs to the CFPB.

13 THE COURT: What exactly is an -- because I've dealt
14 with every kind of privilege there is I thought -- but what
15 exactly is an examination privilege?

16 MS. SIMONETTI: So I'm going to explain it based on,
17 as I said, my non-expert understanding, but it is a privilege
18 that goes to information and documents that would reveal
19 something about the subject matter of the examination or the
20 direction of the examination that the CFPB would object to
21 being in the hands of other people.

22 THE COURT: So it's sort of the little brother as
23 such, or the little sister, of the law enforcement privilege,
24 yeah?

25 MS. SIMONETTI: Being a civil lawyer, I probably

1 shouldn't even say anything about that, but it sounds like it
2 resonates with you.

3 But it is a privilege that is a product of the Code
4 of Federal Regulations. And that would have to be dealt with
5 if we started to look for --

6 THE COURT: But who does it require -- who is it
7 intended to protect?

8 MS. SIMONETTI: It's intended to protect the
9 integrity of the CFPB's investigation. I'm not -- I'm not
10 stating that it can never be overcome. That's not my
11 understanding.

12 THE COURT: No. No.

13 MS. SIMONETTI: But it's not for us to waive. It's
14 not for us to assert.

15 THE COURT: What I'll say about that is this. It's
16 interesting and it will take a while to resolve if you all
17 don't agree.

18 MS. SIMONETTI: Right.

19 THE COURT: You sort of feel, and I understand why,
20 that you're not in a position to agree because it's not your
21 thing.

22 MS. SIMONETTI: Correct.

23 THE COURT: I don't know if formally speaking the
24 CFPB is within my jurisdiction in this particular matter.
25 Obviously, it's a federal agency. I'm the federal court. I

1 get that. But, you know, they're not here. They're not
2 before the Court. They're not part of this case.

3 MS. SIMONETTI: Right.

4 THE COURT: But I'm not above inviting them to
5 submit something. In fact, that might be a way to start this.
6 In other words, to say --

7 MS. SIMONETTI: Well --

8 THE COURT: -- I'd like you to inquire on behalf of
9 the Court as to whether or not they're going to insist on
10 this.

11 MS. SIMONETTI: But you --

12 THE COURT: And if they want to be heard and if they
13 want to intervene. And then we'll -- let's get it out.

14 MS. SIMONETTI: Right.

15 THE COURT: But that's one of the things that takes
16 a long time. So --

17 MS. SIMONETTI: I agree it takes a long time. And
18 also what that means is that we would have to undertake the
19 search now and the burden of finding all of those things.

20 THE COURT: Well, I wouldn't put you to that search
21 or burden until we get the issue out of the way, right? In
22 other words, are they going to -- let me make it clear.

23 Your request is turn over to me everything you've
24 turned over to them. Is that --

25 MR. GUDMUNDSON: Among others, yes.

1 THE COURT: Okay. But that would be the primary one
2 where this investigative examination privilege might come up,
3 fair?

4 MR. GUDMUNDSON: One of them, yes. Correct.

5 THE COURT: Yeah. You know, I would just say you
6 could just take his request and say to CFPB this is the
7 request the Court would like. And they're free to file
8 something with me. I'll hear from them, right?

9 MS. SIMONETTI: Well --

10 THE COURT: And you'll get copies. It will be on
11 notice to everybody.

12 MS. SIMONETTI: Right. But here's --

13 THE COURT: If they want to invoke a certain
14 privilege here --

15 MS. SIMONETTI: But here's the actual --

16 THE COURT: -- come on in and invoke it.

17 MS. SIMONETTI: -- here's the request.

18 Documents concerning any inquiry or investigation by
19 any government entity, either state or federal, including, but
20 not limited to, the CFPB, the United States Senate, DOJ, SEC
21 or FTC related to any income driven repayment plan or
22 forbearance.

23 THE COURT: Right.

24 MS. SIMONETTI: That is extremely broad.

25 THE COURT: That's a different question, right?

1 MS. SIMONETTI: Okay. But --

2 THE COURT: Because we all can sit here and we
3 recognize that what we really mean -- what that really means
4 in terms of a problem is the CFPB. Because --

5 MS. SIMONETTI: I don't -- I don't know that.

6 THE COURT: Well, hold on. To your knowledge as you
7 sit here and to their knowledge, the Montana State Troopers
8 haven't investigated you for this, right?

9 MS. SIMONETTI: Not them for sure.

10 THE COURT: Right. Right.

11 MS. SIMONETTI: They have not.

12 THE COURT: So you're kind of -- we know -- we're
13 able to identify one problem. We can talk about the breadth
14 and the scope and the so forth --

15 MS. SIMONETTI: Right.

16 THE COURT: -- but let's get to what it really is
17 about. That's what it's really about, right?

18 MS. SIMONETTI: It's about the CFPB and the handful
19 of states that I mentioned.

20 THE COURT: Right. Right.

21 MS. SIMONETTI: And so I guess what I'm trying to
22 say is to me it's a little big backwards. Because you would
23 say go look for all of these documents, figure out what they
24 are. Could they possibly be subject to these privileges? You
25 know. I don't know what the states' rights would be frankly.

1 This is just something that came up in the past few days with
2 CFPB.

3 What all is out there? What is it? Is it subject
4 to privilege? At that point, you are so deep in the weeds I
5 suspect that you deal with that first and then you deal with
6 the issue of what are the legal rights.

7 Because they can't -- you can't evaluate -- you
8 can't evaluate privilege on anything until you see it.

9 THE COURT: But you know that there has been an
10 inquiry by this group.

11 MS. SIMONETTI: There's litigation, there's no
12 doubt.

13 THE COURT: Right. So you obviously can identify
14 their counsel because you know where they are.

15 MS. SIMONETTI: I know their counsel.

16 THE COURT: And you could, you know, inform them we
17 have this request. We haven't done the full search, but we
18 recognize it would bear on the documents we turned over to
19 you. Right? You know, your request for documents and the
20 documents we've turned over to you. Meaning the CFPB, yes?

21 MS. SIMONETTI: So if you're talking about the
22 company having turned over documents to the CFPB, I'm quite
23 sure they have.

24 THE COURT: Right.

25 MS. SIMONETTI: Right.

1 THE COURT: But I'm saying you could contact the
2 CFPB and say this is a request. Obviously, it reads on the
3 stuff you've asked us for, the requests you've made of us and
4 the stuff we've given you back.

5 Judge Brown, sitting in Central Islip, who has a
6 gavel and is going to bang it soon, would like to know if you
7 want to be heard on this or if you have any plan on invoking
8 this quasi privilege.

9 MS. SIMONETTI: Right.

10 THE COURT: I'm calling it a quasi privilege for the
11 reason I'm not sure it's as clearly defined having --

12 MS. SIMONETTI: I think that the requirement is
13 actually giving them notice. So let's say you gave them
14 notice with --

15 THE COURT: Right. So give them the notice, but
16 tell them that, you know -- and keep it short, you know.

17 MS. SIMONETTI: Right. Right.

18 THE COURT: That I would like to hear from you. You
19 need to hear back from them in two weeks because you're going
20 to have to figure out if they're going to approach me, right?

21 So maybe three weeks from now, you know, guess what,
22 they don't care. And if they don't care, then we -- what's
23 the --

24 MS. SIMONETTI: I think the -- to me there's still
25 burden in there because you're then asking them or someone to

1 look still at everything.

2 THE COURT: No. No.

3 MS. SIMONETTI: Yes?

4 THE COURT: No. No.

5 MS. SIMONETTI: There might be some things --

6 THE COURT: I would like them to know if they --

7 MS. SIMONETTI: -- that are privileged.

8 THE COURT: -- intend in this matter at all --

9 MS. SIMONETTI: At all?

10 THE COURT: -- to invoke their examination
11 privilege.

12 MS. SIMONETTI: Oh.

13 THE COURT: Because it's a weird thing. I'm not
14 sure you have standing to raise it.

15 MS. SIMONETTI: I don't think we do.

16 THE COURT: Right?

17 MS. SIMONETTI: And I think we can't run afoul of it
18 either. Right.

19 THE COURT: And certainly you don't know if they
20 care. Or if they do, what they care about, right? Maybe the
21 format of their subpoena is proprietary. And they say don't
22 turn over the subpoenas, but you could turn over the documents
23 that -- and then we're done. Then we know. It's easy.
24 Right?

25 Because he's not going to be able to convince me

1 that the subpoena is that relevant if that's really the thing
2 that's -- I'm making this up, but you know -- you know what
3 I'm saying? We can cut through a lot of this.

4 So I'm going to direct you to reach out to their
5 counsel at my request and say -- and give them the discovery
6 request that you think may read on their stuff and tell them
7 that they must as quickly as possible please -- and let's set
8 -- seriously a short-time frame, the next couple of weeks --
9 let you know if they want to be heard or if they have a
10 position or if they don't care. If they don't care, we're
11 done.

12 MS. SIMONETTI: I have not worked with them
13 directly. I do not know what their --

14 THE COURT: Okay. I can't --

15 MS. SIMONETTI: -- response would be.

16 THE COURT: I have these invitations I issue --
17 they're called orders -- so I can issue one if you want. If
18 you need me to --

19 MS. SIMONETTI: No. No.

20 THE COURT: If they won't get back to you, I'll give
21 you something.

22 MS. SIMONETTI: No.

23 THE COURT: You know what I mean? And I'll say if I
24 don't hear back from you in two weeks, I'm going to assume
25 that you have no privilege that you are invoking. And we can

1 take it from there.

2 But that's a good issue and I'm glad you brought
3 that up. So we got one little piece -- see, we got a little
4 piece of progress, right? So that's one issue.

5 What else are the big issues we should work on now?

6 MR. GUDMUNDSON: Are you still speaking to --

7 THE COURT: I'm opening the floor for discussion.

8 MR. GUDMUNDSON: Okay. I think that -- I don't
9 think I've been unclear in my negotiations and discussions
10 with defense counsel. But I think Your Honor is right. I
11 think that for a lot of these issues there doesn't need to be
12 a collection of documents to resolve them.

13 For example, we've got a request out there for
14 communications between Navient and the Department of Education
15 about who may be liable under the contracts. And it's a big
16 issue in the case because it's a big issue in the case.

17 We're claiming third-party beneficiary status
18 essentially and so it's a big issue. They've objected on
19 relevance grounds and we think that's pretty not there. And
20 so, you know, is it relevant or not?

21 I don't think you need to go through and run
22 searches to the tune of millions of dollars to determine -- to
23 negotiate that. That's all we're asking to do, to negotiate
24 these objections.

25 THE COURT: Okay. Okay. So why don't I do this?

1 I'm not going to stay discovery at this point.

2 I do have one other question actually for defense
3 counsel before I close this out.

4 MS. SIMONETTI: Okay.

5 THE COURT: If all of your legal dreams come true in
6 Judge Bianco's decision, are the motions you made completely
7 dispositive of the case or are there still things left?

8 MS. SIMONETTI: Nothing left.

9 THE COURT: Okay. Even the individual claim?

10 MS. SIMONETTI: Correct.

11 THE COURT: And the strongest, shortest argument on
12 that is what? What's the -- what's your defense that could
13 knock out the individual claim?

14 MS. SIMONETTI: Preemption under the HEA. And we
15 also have substantive arguments on the merits of each of the
16 claims.

17 THE COURT: Okay.

18 MS. SIMONETTI: The motion to strike obviously would
19 not impact Ms. Travis.

20 THE COURT: Interestingly, you told me there's sort
21 of a parallel litigation in Pennsylvania. Were those
22 arguments raised there?

23 MS. SIMONETTI: They were raised there. And that
24 motion to dismiss and strike also has not been ruled upon.

25 THE COURT: Oh. Interesting. Okay. That wasn't

1 what I thought you were going to say.

2 MS. SIMONETTI: But I would --

3 MR. GUDMUNDSON: But, Your Honor, I believe --

4 sorry.

5 MS. SIMONETTI: The one motion to strike that has
6 been heard and ruled upon was granted.

7 THE COURT: Okay.

8 MR. GUDMUNDSON: And I believe the preemption
9 argument has been ruled upon in both the CFPB and Pennsylvania
10 actions.

11 THE COURT: So what I'm going to say is this. I
12 think that my re-emphasis of the meet and confer rule really
13 takes the day today because the truth of the matter is I'm not
14 going to stay all discovery as a blanket matter.

15 I think the Second Circuit and Supreme Court have
16 been very clear in their statements. I have them up here and
17 I read them once in a while. Although attorneys don't believe
18 me.

19 The Chief Justice of the United States Supreme Court
20 said we have to move these cases faster. We just can't always
21 stay everything with every motion. And I agree with that.

22 On the other hand, particularly because there is an
23 outcome where plaintiff's counsel's nightmare may come to pass
24 where they lose everything in a motion to dismiss, I'm not
25 going to do something that's going to be an extraordinary

1 expense.

2 So what that all says to me is that nothing is on
3 the table here today that's really ripe yet in the sense that
4 you need to talk to each other and figure where you're going.
5 Try to work it out. If you can't work it out, you're going to
6 come to me, but I need specifics from you on this.

7 It's going to cost 850,000 man hours to do this,
8 person hours to do this, or it requires attorneys to review
9 300,000 documents and we think this category should be out.
10 But I recommend being judicious with your selection, right.

11 And meanwhile if you ask for the world, you won't
12 get that either, right, because you're going to wind up
13 treading on this.

14 She'll -- there's so many. There's 800,000 requests
15 and I can't even --

16 Okay? So you both have to sort of work together and
17 figure it out.

18 I think providing the discovery from the other case
19 was a really smart move and that kind of gives everybody
20 something to work on and what not.

21 I think you should meet on the objections just like
22 we worked -- at least talked through the high level objection
23 on the examination privilege, right?

24 I think you all sit down and do that, right, if
25 you want. It's still business hours. I have two witness

1 rooms behind you. You might be my guests. You know, you can
2 -- because like my family only gets together at weddings and
3 funerals, I find that lawyers talk more when you're in the
4 same room. So while you're here today, if you want to try to
5 work through something, it's a good idea.

6 If you want to set up confers for coming weeks, we
7 can do that. But I think you should just work on the stuff
8 that you can get rid of without going to the expense of doing
9 the search of a billion records and so forth. Yeah?

10 MS. SIMONETTI: Right. And just for the record, on
11 the issue of the investigation materials, I think -- I mean,
12 it's conceivable that the company will have to go to each of
13 the states as well. I do not know what the rights of the
14 various states might be, so --

15 THE COURT: How many state investigations have there
16 been? Do you know?

17 MS. SIMONETTI: There are a handful I want to say.

18 THE COURT: Okay. And I'm not talking about a
19 statement as to the issue of Mary Jones in Nebraska
20 complaining generally.

21 MS. SIMONETTI: No.

22 THE COURT: It's got to be the same sort of kind of
23 conduct or same scope, right?

24 MS. SIMONETTI: Right. I understand. So that's --
25 for example, with the CFPB action, it involves the steering

1 allegations --

2 THE COURT: Right.

3 MS. SIMONETTI: -- and, you know, a handful of other
4 things. And then there are these I want to say four or five
5 pending state cases --

6 THE COURT: Okay. Perfect.

7 MS. SIMONETTI: -- that includes that. I have no
8 idea what the rights of those state AG's might --

9 THE COURT: Right. So let's start off with the one
10 that we know about, right, and see if we can get that resolved
11 in the next couple of weeks.

12 Thereafter, why don't you then solicit input from
13 those states. And if there's a problem, you can all, on
14 consent, anytime, set up a briefing schedule for me where
15 they're free to file something.

16 Because I think, you know, even though they're not
17 parties here, I would let them intervene for that purpose. I
18 mean, it doesn't even have to be that formal. I'll just take
19 a letter.

20 Because you're in a very odd position. I understand
21 you can't waive something that might be protected by law,
22 right? But you're also -- you don't have the information you
23 need to know whether they care, right?

24 Maybe it's one of those eh, whatever, suing anyway.
25 Who cares. Or it's an uh-uh, this stuff, this reveals our

1 informant or whatever. I don't even know.

2 But it's a very interesting issue. Interesting
3 issues are expensive and take time. And I don't encourage
4 them for that reason. It's what we live for as lawyers and
5 judges. We get excited. But the clients, it's the worst
6 thing for them.

7 So see if you can work around the issues as much as
8 you can. And if not, set up briefing schedules and I'll deal
9 with -- and letter motions will be sufficient.

10 I have written a few things in the area if you want
11 to look around. I remember specifically the dental monopoly
12 case and whatever. There might be some case law that will
13 help you.

14 I'm not saying my writings are at the end of the
15 law, but I can show you where I started. Right? So take a
16 look and see if that's helpful. All right?

17 What else should we do today while we're together?

18 MR. GUDMUNDSON: Nothing further from the
19 plaintiffs, Your Honor.

20 THE COURT: Anything else for the defendant while
21 we're here?

22 MS. SIMONETTI: I don't think so.

23 THE COURT: Okay. So again I think it was meeting
24 all of you. I think. Yeah?

25 MS. SIMONETTI: I believe so.

1 THE COURT: Yeah. It was delightful meeting all of
2 you. Keep working well together. And you know how to find
3 me.

4 MR. GUDMUNDSON: Thank you, Your Honor.

5 THE COURT: All right. Have a good day. Take care.

6 (Proceedings concluded at 3:02 p.m.)

7 I, CHRISTINE FIORE, court-approved transcriber and certified
8 electronic reporter and transcriber, certify that the
9 foregoing is a correct transcript from the official electronic
10 sound recording of the proceedings in the above-entitled
11 matter.

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14 _____ February 14, 2019

15 Christine Fiore, CERT

16 Transcriber
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